

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WESLEY GARRETT,

Defendant-Appellant.

UNPUBLISHED

June 22, 2001

No. 222981

Oakland Circuit Court

LC No. 99-164921-FC

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant, who was charged with second-degree murder, was convicted by a jury of the lesser offense of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.414(2). He was sentenced to a term of eight to fifteen years' imprisonment for the manslaughter conviction, and to a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm, but remand for correction of defendant's judgment of sentence.

Defendant argues that his manslaughter conviction is constitutionally invalid because the decedent would have survived if his friends had gotten him prompt medical attention. There is no merit to defendant's argument that the alleged negligence of decedent's friends constitutes an intervening cause that exonerates defendant from criminal responsibility. See *People v Tims*, 449 Mich 83, 100-101; 534 NW2d 675 (1995); *People v Webb*, 163 Mich App 462, 465; 415 NW2d 9 (1987). It is enough that defendant's gunshot was "a" proximate cause of decedent's death. Even "joint equal causes" would not excuse defendant's culpable behavior. *Tims*, *supra*.

Nor are we persuaded by defendant's claim that the trial court erred by denying his motion for a directed verdict on the issue of self-defense. There was conflicting evidence on this issue. The evidence, viewed in a light most favorable to the prosecution, was sufficient to allow the jury to conclude that "defendant's belief of imminent danger either was not honest or was unreasonable." *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Defendant also argues that his manslaughter sentence, which is within the recommended minimum sentence range of the applicable judicial sentencing guidelines, is disproportionate. We disagree. Defendant's sentence is reviewed under the principle of proportionality to determine whether it is proportionate to the seriousness of the circumstances surrounding the

offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). A sentence within the guidelines range is presumptively valid, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987), and defendant here presents no unusual circumstances to overcome the presumptive validity of his sentence. *Milbourn, supra*. We find no abuse of discretion.

Finally, although not raised by either party, we note that defendant's judgment of sentence incorrectly indicates that defendant was convicted of second-degree murder. Accordingly, we remand for the clerical correction of defendant's judgment of sentence to reflect that he was convicted by a jury of the lesser charge of voluntary manslaughter.

Affirmed and remanded for the clerical correction of defendant's judgment of sentence. Jurisdiction is not retained.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey